

APR - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
Federal Communications Commission
Washington, D.C.

In the Matter of)
)
Implementation of Section 10 of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992)

MM Docket No. 92-258

Indecent Programming and)
Other Types of Materials on)
Cable Access Channels)

OPPOSITION OF TIME WARNER ENTERTAINMENT
COMPANY, L.P. TO THE PETITION FOR RECONSIDERATION
OF THE NYNEX TELEPHONE COMPANIES

Time Warner Entertainment Company, L.P. ("TWE")
opposes the Petition for Reconsideration filed by the NYNEX
Telephone Companies ("NYNEX"). NYNEX offers nothing to
explain its interest in this proceeding. Rather, it
gratuitously suggests that the Commission ignore the
language of § 10 of the Cable Television Consumer Protection
and Competition Act of 1992, and, based on NYNEX's view of
the objectives of other parts of the Act, suggests that the
Commission read into § 10(a) an unjustifiable limitation on
the cable operator's discretion in dealing with indecent
programming on leased access (commercial use) channels.

The Commission correctly determined from the
language of § 10, as well as the statements by the Section's
sponsor, that § 10(a) was envisioned as giving cable

operators "wide discretion" in formulating and implementing a policy prohibiting indecent programming. As the Section's author indicated, § 10(a) essentially returns to the cable operator a small part of its editorial discretion that is otherwise restricted by § 612(c)(2) of the 1984 Cable Act (47 U.S.C. § 532(c)(2)). With respect to indecent programming, the cable operator is acting as a "private party". (138 Cong. Rec. S646 (Remarks of Sen. Helms, daily ed. Jan. 30, 1991; Report and Order, MM Docket 92-258, at ¶ 30 n.25)) As such, its editorial decisions should not be restricted unless a programmer can demonstrate that the cable operator has denied it access unreasonably under § 612(d) of the 1984 Cable Act.

NYNEX offers no factual basis for its argument that the Commission should assume cable operators will misuse § 10(a). Moreover, its one example of possible misuse does not support its position. NYNEX posits that the Commission's interpretation of § 10(a) would permit a cable operator to refuse indecent programming from a competitor while accepting "the same programming provided by an affiliated programmer or another noncompeting entity". (NYNEX Petition at 4)

First, channel capacity used by programmers affiliated with the cable operator is not considered leased

access capacity. Therefore, on leased access channels there can be no discrimination between affiliated programmers and other programmers.

Second, in any event, it is difficult to envision how one could determine that different indecent programs are "the same". Within the category of indecent programming there are infinite gradations of indecency ranging from the relatively tame to those that almost cross the line into obscenity. Therefore, cable operators should be permitted

Finally, the Commission correctly noted that Congress did not appear to envision a role for the FCC under § 10(a), unlike § 10(b) where the statute specifically directs the promulgation of rules. Where the Commission has

CERTIFICATE OF SERVICE

I hereby certify that, on 8 April 1993, copies of the foregoing "Opposition of Time Warner Entertainment Company, L.P., to the Petition for Reconsideration of the NYNEX Telephone Companies" were sent by First Class United States Mail, postage prepaid, to the following:

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